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As of: September 26, 2000 (2:47PM)

LC9002

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing for conditions for commitment to a community facility, program, or course of treatment of persons with a mental disorder; providing for revocation of a commitment to a community facility, program, or course of treatment; and amending sections 53-21-104, 53-21-121, 53-21-123, 53-21-127, 53-21-128, and 53-21-181, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-104, MCA, is amended to read:

"53-21-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by

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the United States department of health, education, and welfare. An experimental research project involving persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility ~~which~~ that is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health facility in resolving any grievance the patient may have concerning the patient's commitment or course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all

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patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after waiting a reasonable time for a response from the professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning:

(a) the status of the mental health facilities and treatment programs which it has inspected; and

(b) medications involuntarily administered to patients in mental health facilities and the effectiveness of the review procedure required by ~~53-21-127(2)~~ [section 7] in protecting patients from unnecessary or excessive medication."

{ Internal References to 53-21-104:
53-21-166x }

Section 2. Section 53-21-121, MCA, is amended to read:

"53-21-121. Petition for commitment -- contents of -- notice of. (1) The county attorney, upon the written request of any person having direct knowledge of the facts, may file a petition with the court alleging that there is a person within the county who is suffering from a mental disorder and who requires commitment pursuant to this chapter.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental disorder, a statement of the disposition sought pursuant to 53-21-127(2), and the need for commitment;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the respondent for whom evaluation is sought;

(e) the name and address of the respondent's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the

respondent for whom evaluation is sought; if there is no attorney, there must be a statement as to whether to the best knowledge of the person requesting the petition the respondent for whom evaluation is sought is indigent and unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent, which must be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition must be hand-delivered to the respondent and to the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent must be hand-delivered or mailed to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent. The notice may provide, other than as to the respondent and the respondent's counsel, that no further notice will be given unless written request is filed with the clerk of court."

{*Internal References to 53-21-121:*

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53-21-114* x 53-21-129*x }

Section 3. Section 53-21-123, MCA, is amended to read:

"53-21-123. Examination of respondent following initial hearing -- recommendation of professional person. (1)

Following the initial hearing, whether before a judge or justice of the peace, the respondent must be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of the findings in person or by phone and shall make a written report of the examination to the court, with copies to the respondent's attorney and the county attorney. If the professional person recommends commitment, the professional person's written report must contain a statement of the professional person's recommendations to the court for disposition under 53-21-127(2).

(2) The following action must be taken based on the professional person's findings:

(a) If the professional person recommends dismissal, the professional person shall additionally notify counsel and the respondent must be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If the court finds that commitment proceedings

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should continue, the hearing must be held as scheduled.

(3) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. The reasons must be set forth in the order, along with the amount of additional time needed."

{Internal References to 53-21-123:
53-21-114*x 53-21-129*x}

Section 4. Section 53-21-127, MCA, is amended to read:

"53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) ~~(a)~~ If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

(3) At the conclusion of the disposition hearing, the court shall:

~~(i)~~(a) commit the respondent to the state hospital for a period of not more than 3 months; or

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~~(ii)(b)~~ commit the respondent to a community facility, program, or another appropriate course of treatment, including outpatient therapy, for a period of not more than 3 months;

~~— (iii) order the respondent to be placed in the care and custody of a relative or guardian or some other appropriate place other than an institution;~~

~~— (iv) order outpatient therapy; or~~

~~— (v) make some other appropriate order for treatment.~~

~~(b)(4)~~ A treatment ordered pursuant to this subsection may not affect the respondent's custody or course of treatment for a period of more than 3 months.

~~(c)(5)~~ In determining which of the alternatives in subsection ~~(2)(a)~~ (3) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. ~~The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the~~

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~~involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.~~

~~(d)(6)~~ Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility, program, or course of treatment as provided in [section 8] and may not require commitment at the state hospital.

~~(e)(7)~~ In ordering commitment pursuant to this section, the court shall make the following findings of fact:

~~(i)(a)~~ a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;

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~~(ii)~~(b) the alternatives for treatment that were considered;

~~(iii)~~(c) the alternatives available for treatment of the respondent;

~~(iv)~~(d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

~~(v)~~(e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

~~(vi)~~(f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives; and

~~(vii)~~(g) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives."

{ Internal References to 53-21-127:

2-16-503x	25-31-602x	25-31-602x	25-31-602x
25-31-602x	25-31-602x	27-2-401x	27-8-204x
37-3-323x	37-6-311x	37-11-321x	37-12-322x
41-5-1504x	53-21-104	53-21-121	53-21-123
53-21-128	53-21-128	53-21-132x	53-21-181
53-21-195c	53-21-195(c)?	53-21-197x	53-21-197x
53-21-198x	53-21-198x	53-21-198x	70-19-413x
70-29-113x	70-29-210x	70-29-328 x}	

Section 5. Section 53-21-128, MCA, is amended to read:

"53-21-128. Petition for extension of commitment period.

(1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of commitment provided for in 53-21-127~~(2)~~, the professional person in charge of the patient at the place of commitment may petition the district court in the county where

the patient is committed for extension of the commitment period unless otherwise ordered by the original committing court. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices that have been employed in evaluating the patient, the course of treatment that was undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's counsel. If any person notified requests a hearing prior to the termination of the previous commitment authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested must be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing must be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs

and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not to be suffering from a mental disorder and requiring commitment within the meaning of this part, the patient must be discharged and the petition dismissed. If the court finds that the patient continues to suffer from a mental disorder and to require commitment, the court shall order commitment, ~~custody in relatives, outpatient therapy, or other order to~~ the state hospital or to a community facility, program, or course of treatment as set forth in 53-21-127(2). However, an order may not affect the patient's custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not found suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Further extensions may be obtained under the same procedure described in subsection (1); however, the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1)."

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{ Internal References to 53-21-128:

53-21-181 x	53-21-195x	53-21-195x	53-21-197x
53-21-197 x	53-21-198x	53-21-198x	53-21-198x
53-21-414 x }			

Section 6. Section 53-21-181, MCA, is amended to read:

"53-21-181. Discharge during or at end of initial commitment period -- patient's right to referral. (1) At any time within the 3-month period provided for in 53-21-127(2), the patient may be discharged on the written order of the professional person in charge ~~of him~~. In the event the patient is not discharged within the 3-month period and if the term is not extended as provided for in 53-21-128, ~~he shall~~ the patient must be discharged by the facility, program, or course of treatment as provided in [section 8] at the end of 3 months without further order of the court. Notice of the discharge ~~shall~~ must be filed with the court and the county attorney at least 5 days prior to the discharge.

(2) Upon being discharged, each patient has a right to be referred, as appropriate, to other providers of mental health services."

{ Internal References to 53-21-181:

53-21-413x }

NEW SECTION. Section 7. Involuntary medication. The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the

public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

NEW SECTION. Section 8. Conditions of commitment to a community facility, program, or course of treatment. (1) If the court orders a disposition under 53-21-127(3)(b), the

court may order the following conditions for commitment to a community facility, program, or course of treatment, including but not limited to:

(a) following a treatment plan as set forth by the designated community facility, program, or individual responsible for the management and supervision of the respondent's treatment;

(b) specific residential or housing requirements that may include being under the care and custody of a relative or guardian;

(c) involuntary medication, if ordered as provided in [section 7].

NEW SECTION. Section 9. Petition for revocation of commitment to a community facility, program, or course of treatment-- prohibition on detention -- hearing. (1) A proceeding for the revocation of a commitment to a community facility, program, or course of treatment is commenced by the filing of a written petition in any district court by the county attorney, the professional person in charge of the patient's case, or the patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify the district court that committed the patient for the period of the patient's present commitment under 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded to the clerk. The file or files must be promptly forwarded.

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(2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

(3) The petition must state:

(a) the patient's name and last-known address;

(b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent appointed by the court, if any, and if this information is reasonably ascertainable;

(c) that the patient has been determined by the district court to:

(i) require commitment to the state hospital as determined by the criteria set forth in 53-21-126(1)(a) through (c); or

(ii) require additional conditions for the remainder of the time period of a commitment to a community facility, program, or course of treatment as determined by the criteria set forth in 53-21-126(1)(d);

(d) that the patient is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128;

(e) a simple and precise statement of the facts showing that the patient has violated a condition of the order for commitment pursuant to [section 8], and:

(i) that the violation has caused a deterioration of the patient's mental disorder, and that as a result of this deterioration, the patient can no longer be appropriately served under a commitment to a community facility, program, or course of treatment; or

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(ii) that the violation will predictably result in deterioration of the patient's mental conditions and the ability to provide for the patient's own basic needs and if not addressed, the patient will no longer be able to be served in a commitment to a community facility, program, or course of treatment; and

(f) a statement of the rights of the respondent, including those set forth in 53-21-115, which must be in conspicuous print and identified by a suitable heading.

(4) The petition must be filed with the clerk of court, who shall immediately notify the judge.

(5) The judge shall issue notice of the time and place of the hearing on the petition. The hearing must be held no more than 5 days after the date that the petition is filed, including weekends and holidays, unless the fifth day falls upon a weekend or holiday or unless additional time is requested by the patient. Further, the judge shall ensure that the notice and copy of the petition are immediately hand-delivered to the patient, to the patient's friend of respondent, if any, and to the patient's counsel.

(6) The court may not order detention of the person under commitment to a community facility, program, or course of treatment pending the hearing, except as permitted under 53-21-124.

NEW SECTION. Section 10. Revocation of commitment to a community facility, program, or course of treatment--

additional conditions. (1) The court may order that the patient's commitment to a community facility, program, or course of treatment be revoked and that the patient be committed to the state hospital if, after a hearing, the court finds by clear and convincing evidence that:

(a) the patient has been determined by the district court to be suffering from a mental disorder and requiring commitment and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128; and

(b) the patient has violated a condition of a commitment to a community facility, program, or course of treatment, that the violation has caused a deterioration of the patient's mental condition, and that as a result of this deterioration, the patient can no longer be appropriately served in the community.

(2) A revocation of the patient's status under subsection (1) must be based on the testimony of the professional person responsible for the patient's case.

(3) If the court revokes the patient's status pursuant to subsection (1), a treatment plan must be updated or a new plan prepared for the patient as required by and within the time set forth in 53-21-162.

(4) The imposition of additional conditions may be based upon a finding that a violation of existing conditions have occurred and that if a violation is not addressed, the person will no longer be able to be served under a commitment to a community facility, program, or course of treatment.

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(5) Except as provided in 53-21-198, an order revoking the patient's status may not order hospitalization or impose other conditions of release that extend beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128.

NEW SECTION. **Section 11. {standard} Codification instruction.** [Sections 7 through 10] are intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [sections 7 through 10].

- END -

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